

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

CHRISTOPHER WITHERS,

Plaintiff,

v.

SAM GREEN, et al.

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 6:20cv65

ANSWER

Defendants, Sam Green and Dwayne Wade (collectively “Defendants”), by counsel, pursuant to Rule 12(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, file this Answer to plaintiff Christopher Withers’ (“Withers”) Complaint, ECF No. 1. In support thereof, Defendants state as follows:

Defendants deny each and every allegation in the Complaint except as hereinafter may be expressly admitted.

In response to the numbered paragraphs contained in the Complaint, Defendants admit, deny, or otherwise respond as follows:

1. The allegations contained in paragraph 1 of the Complaint are merely introductory in nature to which no response is required. Defendants deny any factual allegations contained in paragraph 1.

2. The allegations contained in paragraph 2 of the Complaint are mere legal conclusions to which no response is required.

3. The allegations contained in paragraph 3 of the Complaint are mere legal conclusions to which no response is required.

4. The allegations contained in paragraph 4 of the Complaint are mere legal conclusions to which no response is required.

5. The allegations contained in paragraph 5 of the Complaint are mere legal conclusions to which no response is required.

6. Defendants lack sufficient information to either admit or deny the allegations contained in paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants lack sufficient information to either admit or deny the allegations contained in paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in paragraph 10 of the Complaint.

11. Regarding the allegations contained in paragraph 11 of the Complaint, Defendants admit that Green activated his emergency lights, that Withers failed to pull over or otherwise permit Green to safely pass Withers' vehicle, and that Withers finally stopped his vehicle on Old Rustburg Road, which had been blocked by an emergency vehicle. Defendants lack sufficient information to either admit or deny the remaining allegations contained in paragraph 11.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint.

13. Defendants deny the allegations contained in paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in paragraph 15 of the Complaint.

16. Regarding the allegations contained in paragraph 16 of the Complaint, Defendants admit only that Withers was charged with felony eluding in violation of Va. Code § 46.2-

817(B), failure to yield to an emergency vehicle in violation of Va. Code § 46.2-829, and obstruction of justice in violation of Va. Code § 18.2-460, that Withers plead guilty to eluding a law enforcement command in violation of Va. Code § 46.2-817(A) and failure to yield to an emergency vehicle in violation of 46.2-829, and that the obstruction of justice charge was dismissed by nolle prosequi. Defendants deny any remaining factual allegations in paragraph 16.

17. For their response to the allegations contained in paragraph 17 of the Complaint, Defendants incorporate by reference their responses to paragraphs 1–16 as if fully set forth herein.

18. Regarding the allegations contained in paragraph 18 of the Complaint, Defendants admit only that Withers was initially seated in the driver's seat of his vehicle when Defendants approached Withers' vehicle and that law enforcement officers and other first responders were in the vicinity of Withers' vehicle when Withers finally stopped his vehicle on Old Rustburg Road. Defendants deny striking Withers at any time as alleged in the Complaint. Defendants lack sufficient information to either admit or deny any remaining allegations contained in paragraph 18.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in paragraph 23 of the Complaint.

24. For their response to the allegations contained in paragraph 24 of the Complaint, Defendants incorporate by reference their responses to paragraphs 1–23 as if fully set forth herein.

25. Defendants deny the allegations contained in paragraph 25 of the Complaint.

26. Regarding the allegations contained in paragraph 26 of the Complaint, Defendants deny assaulting, battering, or offensively touching Withers without lawful justification. Defendants lack sufficient information to either admit or deny any remaining allegations contained in paragraph 26.

27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in paragraph 30 of the Complaint.

31. For their response to the allegations contained in paragraph 31 of the Complaint, Defendants incorporate by reference their responses to paragraphs 1–30 as if fully set forth herein.

32. The allegations contained in paragraph 32 of the Complaint are mere legal conclusions to which no response is required.

33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint.

39. Defendants deny Withers is entitled to the relief requested in his prayer for relief or to any relief whatsoever.

40. Defendants DEMAND TRIAL BY JURY.

Affirmative Defenses

1. Defendants assert the affirmative defense of qualified immunity.
2. Defendants assert the affirmative defense of state sovereign immunity.
3. Defendants assert the affirmative defense of good faith/governmental immunity.
4. Defendants assert the affirmative defense of Eleventh Amendment immunity for any claims against them in their official capacities.
5. Plaintiff fails to state a claim under the Fourteenth Amendment to the United States Constitution because the Fourth Amendment provides an explicit textual source of constitutional protection for his claim, and Plaintiff does not allege he was under arrest at the time of the alleged use of force.
6. The Complaint fails to allege sufficient facts warranting punitive damages.
7. The Complaint fails to allege sufficient facts to support a claim for gross negligence.
8. Plaintiff assumed the risk of his alleged injuries.
9. Defendants' actions were justified and objectively reasonable under the circumstances.
10. Defendants reserve the right to amend this Answer to assert any other affirmative defenses supported by the evidence and information learned in discovery.

Respectfully submitted,

SAM GREEN
DWAYNE WADE

/s/

Nathan H. Schnetzler (VSB No. 86437)

FRITH ANDERSON + PEAKE, P.C.

29 Franklin Road, SW

P.O. Box 1240

Roanoke, Virginia 24006-1240

Phone: (540) 772-4600

Fax: (540) 772-9167

Email: nschnetzler@faplawfirm.com

Counsel for Sam Green and Dwayne Wade



CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2021 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to counsel of record

/s/
Nathan H. Schnetzler